THE HON'BLE SRI JUSTICE G. CHANDRAIAH

W.P.No.10618 of 2007

Dated:23-05-2007

Between:-

Mohd. Masood Azhar and another.

..Petitioners

And

Greater Hyderabad Municipal Corporation
Rep., by its Commissioner,
Tank Bund Road, Hyderabad and two others.

..Respondents.

THE HON'BLE SRI JUSTICE G. CHANDRAIAH

W.P.No. 10618 of 2007

:O R D E R:

Heard the learned counsel for the petitioners and the learned standing counsel for the respondents.

This writ petition is filed challenging the show cause notice dated

09-05-2007of the third respondent whereunder it was directed to show cause within three days from the date of receipt of the impugned notice as to why the trade license of the Shadan Hotel should not be cancelled in exercise of the powers conferred under Section 622 (3) of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') and also directed to close down the restaurant, failing which further action will be taken against the operation of the trade.

The case of the petitioners is that they obtained the premises bearing No. 16-7-311/1 to 5 situated at Azampura, Opp: Sahifa Mosque, Hyderabad on lease for running hotel business in the name and style of M/s. Hotel Shadan on a monthly rent of Rs.12,000-00 for a

period of five years under a rental agreement dated 25-12-2005. The petitioners also obtained trade license on 08-05-2006, which was got renewed on 13-04-2007. The respondent No.3, by the proceedings dated 13-11-2006 issued 'no objection certificate' for carrying on hotel business.

While the matter stood thus, the third respondent received a representation from the Secretary, Azampura Welfare Residents Society dated 26-04-2007 to the effect that the Beef Biryani Restaurant running in premises No. 16-7-311/1 to 5, Azampura, Opp: Sahifa Mosque, Hyderabad is causing much inconvenience to the residents and the passerbyes' of the locality. The officials of the respondents conducted spot inspection and found that no parking place is provided by the hotel management for vehicles as per the norms laid down by the Municipal Corporation. The petitioners were therefore directed to show cause as to why the trade license of the restaurant be not cancelled. In response to the impugned show cause notice, it is stated, the petitioners have given detailed explanation on 14-05-2007.

It is the case of the petitioners that there is sufficient parking place to the extent of 15'.0 x 15.9 ad-measuring 255 Sq. Ft on the northern side of the premises and there is also parking of 8'.0 wide in front of the shutters of the hotel followed by 36'.0 x 6'.0 wide foot path. It is averred that the third respondent along with some other officials came to the hotel premises on 15-05-2007 and threatened to close down the business.

Learned counsel for the petitioner contends that though the description of the impugned notice is 'show cause notice', on verification of the contents of the impugned notice at one place it directed to show cause within three days from the date of receipt of it as to why the trade license of the restaurant should not be cancelled in exercise of powers conferred under Section 622 (3) of the Act and at another place it directed to close down the restaurant.

It is true on the face of the impugned notice, it is evident that at one point of time it looks like a show cause notice, but at another stage a direction was given to close down the restaurant. When the petitioners were directed to submit the explanation within three days as to why the trade license of the restaurant should not be cancelled, in exercise of powers conferred under Section 622 (3) of the Act, it ought not to have directed the petitioners to close down the restaurant.

On careful perusal of the impugned notice it can be concluded that the third respondent instead of giving opportunity by way of show cause notice before resorting to drastic action of closing down the restaurant, the impugned notice ought not to have directed to close down the restaurant. More over the petitioners have submitted their explanation on 14-05-2008 in response to the notice impugned. Without considering such explanation, the respondents are not justified in passing orders directing closure of the business premises. The same would amount to violating the rule of *audi alteram partem*.

In the facts and circumstances of the case I deem it appropriate to direct the respondents-authorities to pass reasoned orders, after considering the explanation submitted on 14-05-2007 by the petitioners pursuant to the impugned show cause notice, in accordance with law. However, till such time, the respondents are directed not to interfere with the hotel business of the petitioners in the premises bearing No.16-7-311/4, Azampura, Hyderabad. The reasoned order may be communicated to the petitioners.

Accordingly, the writ petition is disposed of. No costs.

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G. CHANDRAIAH, J

Dated: 23-05-2007.
Pvks/*
Nb:- Furnish c.c. in three days.
B/o pvks/*